



GENERAL SERVICES ADMINISTRATION

41 CFR Part 102-117

[FMR Change-2014-04; FMR Case 2013-102-1; Docket 2013-0009, Sequence 1]

RIN: 3090-AJ35

Federal Management Regulation (FMR); Transportation

Management, Transportation Officer Obligating Authority

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is amending the Federal Management Regulation (FMR) to recommend that agencies provide written authority to Transportation Officers (TO) who acquire transportation services utilizing a rate tender acquisition for freight and cargo, including household goods (HHGs). Further, GSA recommends that those who acquire transportation services should be trained in transportation management and/or have relevant transportation experience in order to properly manage the acquisition.

DATES: Effective [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Lee Gregory, Office of Asset and Transportation Management (MA), Office of Government-wide Policy (OGP), at 202-507-0871 or by email at

lee.gregory@gsa.gov. For information pertaining to status or publication schedules, contact General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., ATTN: Hada Flowers, Washington, DC 20405-0001. Please cite FMR Case 2013-102-1.

SUPPLEMENTARY INFORMATION:

A. Background

Agencies are authorized to procure transportation services either through the Federal Acquisition Regulation (FAR) by utilizing a contract or via 49 U.S.C. 10721 (for rail transportation), 49 U.S.C. 13712 (for surface transportation), 49 U.S.C. 15504 (for pipeline transportation) by utilizing rate tenders.

Rate tenders are an alternative method of acquiring transportation services that is neither mandatory nor exclusive. In order to determine which method is better suited for the acquisition of transportation services, an evaluation of the transportation services to be acquired must be made. The FMR discusses the criteria for choosing between rate tender and FAR acquisitions in FMR sections 102-117.30 through 102-117.55.

The FAR requires that a Contracting Officer (CO) receive clear instructions in writing regarding the CO's authority (48 CFR 1.603-3). Only a CO may enter into

contracts and sign on behalf of the Government. In contrast, there is no analogous regulation for Federal TOs under which an appointing official authorizes them to acquire transportation services.

A TO who acquires transportation services through a rate tender acquisition should be qualified and trained in transportation management and/or have relevant transportation experience in order to properly manage and obligate funds for the acquisition.

GSA reviewed the transportation management policy regarding TOs and the acquisition of transportation services, and published a proposed rule in the Federal Register on August 16, 2013 (78 FR 49994). The proposed rule recommended that TOs who obligate Government funds for rate tender acquisitions of transportation services should be properly authorized in writing by their agencies. The proposed rule also recommended that TOs be qualified and trained in transportation management and/or have relevant transportation experience in order to properly manage a rate tender acquisition.

B. Public Comments and Responses

In the proposed rule, GSA provided the public a 60-day comment period which ended on October 15, 2013. GSA received comments from the Department of Energy (DOE), the National

Archives and Records Administration (NARA), and from a commercial Transportation Service Provider (TSP). The final rule reflects the following changes made as a result of some of these comments.

Comment: DOE suggested that the duties associated with a Certifying Officer releasing funds from a Third Party Payment System (TPPS) to a TSP be added in the section identifying TO responsibilities.

Response: The Department of Treasury and an agency's Chief Financial Officer, or similar agency official, is the source for providing relevant and current information regarding the duties and responsibilities of Certifying Officers. An agency can supplement this regulation in internal policies to meet its missions and goals. Therefore, no change was made as a result of this comment.

Comment: DOE recommended including two additional definitions to FMR section 102-117.25, Electronic Funds Transfer (EFT) and TPPS.

Response: As neither EFT nor TPPS are used in the part, GSA declines to define the terms in FMR section 102-117.25.

Comment: DOE suggested that training as a "Certifying Officer" should be added to the recommendations regarding what training and/or experience is suggested for an agency to warrant an individual to acquire transportation services.

Response: After review, GSA included language in section FMR 102-117.380(a) addressing acquisition and certifying officer training.

Comment: DOE stated that the duties of a Contracting Officer's Representative (COR) and of a Certifying Official are integral to acquiring transportation services and closing out a Bill of Lading (BOL). Therefore, DOE suggested that the responsibilities of acting as a COR and/or Certifying Official should be included in FMR sections 102-117.25, 102-117.365, and 102-117.390.

Response: GSA defers to agencies to determine whether or not the TO is also a COR and/or Certifying Official. Using the phrases "include, but are not limited to," "may include," and "baseline" provide flexibility to your agency to include other responsibilities such as serving as a COR and/or Certifying Official. Therefore, no change was made to FMR sections 102-117.25 and 102-117.390 as suggested by DOE.

GSA also notes that this final rule does not contain the proposed FMR section 102-117.410, Is a Transportation Officer liable for his/her actions? GSA determined that this topic is outside the intended scope of this rule.

Comment: NARA inquired as to the training source(s) for the twelve (12) hours of continuing education training for TOs that is recommended in FMR section 102-117.395.

Response: GSA defers to agencies to determine the type(s), source(s), and subject(s) of the training. For example, your agency may identify the GSA Federal Transportation and Logistics Management eLearning site as an acceptable training source for TOs. This eLearning site is available at <http://transportationofficer.golearnportal.org/>. Similarly, another program may be deemed acceptable. As such, no change was made as a result of this comment.

Comment: NARA questioned whether in FMR section 102-117.365, the reference to TO duties including "signing a BOL" constitutes stating that the shipment was received intact and whether it should be the responsibility of the TO to sign BOLs. NARA stated that its agency BOLs are created and forwarded to appropriate offices. The shipments are received and signed for by the agency representatives in the field, who are not considered TOs, but rather receivers of the services. TSPs require the signed BOLs for invoicing.

Further, NARA stated that it does not have dedicated personnel at its facilities' loading docks. Based upon the proposed language, NARA believes that all individuals receiving at the loading dock would need to be warranted.

Response: In response to NARA's question of whether signing BOLs confirms that the shipment was received intact and whether it should be the TO's responsibility to sign every BOL, this would be determined by the internal policies of each agency. After review of NARA's comments, the word "may" was added to FMR section 102-

117.365 to read as follows, "A Transportation Officer's (TO) responsibilities may include:" to provide flexibility to agencies.

Comment: A commercial TSP stated that the proposed regulation was written with the terms "should" and "we recommend," and that it appeared that there is no enforcement authority to make this mandatory. The commercial TSP wanted to know if this was correct.

Response: GSA does not have the authority to make this a required program, and therefore, instead strongly recommends it. Agencies have the authority to mandate this recommendation through internal policies and procedures.

Comment: A commercial TSP stated that the proposed rule appeared to change the FMR for transportation services that utilize a rate tender acquisition. The commenting party asked if the intent was to change the Federal Travel Regulation (FTR), and if so, how this would affect GSA's Centralized Household Goods Traffic Management Program (CHAMP), which is run predominately under tenders.

Response: This rule does not change the FTR. This rule increases assurance that agency TOs, including those utilizing a rate tender acquisition for HHGs, have the appropriate background to perform their duties.

Comment: A commercial TSP asked if the Office of Government-wide Policy (OGP) is aware that if any tariff is used to establish transportation pricing for a movement of HHGs, a rate is being tendered off of that tariff, regardless of whether the shipment is

booked via CHAMP, via the schedule, or via an independent contract. If OGP disagreed, the commercial TSP asked for an explanation.

Response: This comment is outside the scope of this rule.

Comment: A commercial TSP asked if OGP is aware that "GSA Post Audits" requires all TSPs handling any HHGs off of the schedule or independent contracts to submit copies of their tariff so that they can properly audit all shipments tendered off of that tariff.

Response: This comment is outside the scope of this rule.

Comment: A commercial TSP suggested additional language to FMR section 102-117.390, to specify that anyone who acquires transportation services should be trained in transportation management or have relevant transportation experience in order to properly manage the acquisition.

Response: GSA added the suggested language to the summary section of the final rule and notes that FMR section 102-117.380, in effect, includes equivalent language.

Finally, GSA also notes that this final rule does not contain the proposed section 102-117.405, Are there dollar limits on transportation service acquisitions? GSA determined that this topic is addressed in FMR section 117.380(b).

C. Substantive Changes

This final rule:

- Defines the terms "Third Party Logistics," "Transportation Officer," and "Transportation Officer Warrant";
- Recommends that rate tender acquisitions of transportation services for an agency be performed only by a warranted Transportation Officer;
- Lists the suggested minimum elements of a Transportation Officer warrant;
- Outlines the suggested minimum recommendations for training and/or experience to be a warranted Transportation Officer; and
- Recommends agency procedures for creating a warranted Transportation Officer program.

D. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This is not a significant regulatory action,

and therefore, is not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

E. Regulatory Flexibility Act

While these revisions are substantive, this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The final rule is also exempt from the Administrative Procedures Act per 5 U.S.C. 553(a)(2) because it applies to agency management or personnel policies related to transportation management.

F. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose recordkeeping or information collection requirements, or the collection of information from offeror, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, et seq.

G. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management or personnel.

List of Subjects in 41 CFR Part 102-117

Transportation Management.

Dated: August 5, 2014

Dan Tangherlini,
Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR part 102-117 as follows:

PART 102-117—TRANSPORTATION MANAGEMENT

1. The authority citation for 41 CFR part 102-117 continues to read as follows:

Authority: 31 U.S.C. 3726; 40 U.S.C. 121(c); 40 U.S.C. 501, et seq.; 46 U.S.C. 55305; 49 U.S.C. 40118.

2. Amend § 102-117.25 by alphabetically adding the definitions "Third Party Logistics (3PL)", "Transportation Officer (TO)", and "Transportation Officer Warrant" to read as follows:

§ 102-117.25 What definitions apply to this part?

* * * * *

Third Party Logistics (3PL) is an entity that provides multiple logistics services for use by customers. Among the transportation services that 3PLs generally provide are integration transportation, warehousing, cross-docking, inventory management, packaging, and freight forwarding.

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Transportation Officer (TO) is a person authorized, in accordance with this part, to select transportation service providers using rate tenders. Duties may include, but are not limited to, selecting Third Party Logistics (3PL) or

Transportation Service Providers (TSP), and issuing bills of lading.

Transportation Officer Warrant is an agency-issued document that authorizes a Transportation Officer (TO) to procure transportation services using rate tenders, which may include, but are not limited to, selecting Third Party Logistics (3PL) or Transportation Service Providers (TSP), issuing bills of lading, and otherwise performing the duties of a TO.

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3. Add Subpart M, consisting of §§ 102-117.365 through §§ 102-117.400 to read as follows:

**Subpart M—Recommendations for Authorization and
Qualifications to Acquire Transportation Using a Rate Tender
Sec.**

102-117.365 What are the responsibilities of a
Transportation Officer?

102-117.370 Should I have a Transportation Officer warrant
to acquire transportation services using a rate tender?

102-117.375 Are there instances where a Transportation
Officer warrant is not necessary to acquire
transportation services?

102-117.380 What should be contained in a Transportation
Officer warrant to acquire transportation services?

102-117.385 Is there a standard format for a Transportation
Officer warrant?

102-117.390 What are the recommended Transportation Officer
training and/or experience levels?

102-117.395 Should I continue my training to maintain my
warrant?

102-117.400 How should my warrant be documented?

**Subpart M—Recommendations for Authorization and
Qualifications to Acquire Transportation Using a Rate Tender**

**§ 102-117.365 What are the responsibilities of a
Transportation Officer?**

A Transportation Officer's (TO) responsibilities may include:

- (a) Negotiating rates;
- (b) Signing bills of lading (BOL);
- (c) Approving additional accessorial charges;
- (d) Selecting and procuring services of a TSP;
- (e) Selecting and procuring services of a 3PL;
- (f) Serving as a transportation subject matter expert to a Contracting Officer (CO); and/or
- (g) Other roles/responsibilities, such as serving as a certifying official for BOL or as a disbursement official.

§ 102-117.370 Should I have a Transportation Officer warrant to acquire transportation services using a rate tender?

Yes, it is recommended that you have a written document, such as a warrant, issued by the head of your agency or their designee, which expressly allows you to acquire transportation services for using approved non-Federal Acquisition Regulation (FAR) acquisition methods for specified transportation services, and states a dollar limit or range for the warrant authority.

§ 102-117.375 Are there instances where a Transportation Officer warrant is not necessary to acquire transportation services?

Yes, a Transportation Officer warrant is not necessary to:

(a) Ship packages through a contract under the GSA Schedules program, including any Blanket Purchase Agreement, as these are FAR-based contracts;

(b) Ship packages or other materials through any other FAR-based contract; or

(c) Send items through the United States Postal Service.

§ 102-117.380 What should be contained in a Transportation Officer warrant to acquire transportation services?

The warrant for authority to acquire transportation services for freight and cargo, including HHGs, issued by the agency head or their designee should:

(a) State that you have sufficient experience (any combination of Federal, public, and/or commercial) and/or training in transportation services, including any relevant acquisition or certifying officer training, that qualifies you to acquire the transportation services needed by your agency;

(b) List the maximum dollar limit, if any, and any other limits, such as the types of services that you may acquire;

(c) State your agency's necessary conditions to maintain the warrant; and

(d) Include an expiration date for the warrant, recommended not to exceed three years from the date of issuance.

§ 102-117.385 Is there a standard format for a Transportation Officer warrant?

No. GSA can provide your agency with a suggested format. Agencies could also model the Transportation Officer warrant after the Contracting Officer warrant, or they may establish their own format.

§ 102-117.390 What are the recommended Transportation Officer training and/or experience levels?

(a) The following are suggested agency transportation officer training and/or experience baselines:

(1) For a Basic (Level 1) Transportation Officer Warrant:

(i) Twenty-four (24) hours of training in Federal transportation; or

(ii) Two (2) years of Federal, public, and/or commercial experience in acquiring transportation through rate tenders.

(2) For an Experienced (Level 2) Transportation Officer Warrant:

(i) Thirty-two (32) hours of training in transportation, including twenty (20) hours of training in Federal transportation; or

(ii) Three (3) years of Federal, public, and/or commercial experience in acquiring transportation through rate tenders.

(3) For a Senior (Level 3) Transportation Officer Warrant:

(i) Sixty (60) hours of training in transportation, including forty (40) hours of training in Federal transportation; or

(ii) Five (5) years of Federal, public, and/or commercial experience in acquiring transportation through rate tenders.

(b) GSA created an online eLearning Transportation Officer training site to provide a standard Governmentwide body of transportation knowledge available to all agencies. This Web-based eLearning site is available at <http://transportationofficer.golearnportal.org/>.

§ 102-117.395 Should I continue my training to maintain my warrant?

Yes, you should continue your training. Your agency will determine the continuing education that applies specifically to your warrant. It is recommended that at least twelve (12) hours of transportation training per year be completed in order to maintain a Transportation Officer warrant.

§ 102-117.400 How should my warrant be documented?

The head of your agency or their designee should state, in writing, that you have the recommended training and/or experience suggested by § 102-117.390. You should retain a copy of this Transportation Officer warrant. Agency heads or their designee(s) may amend, suspend, or terminate warrants in accordance with agency policies and/or procedures.

[Billing Code 6820-14]

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